

REMARKS

Original Claims Indicated As Allowable

The November 2, 2004 Office Action indicated claims 4 and 16 would be allowable if written in independent form. These claims are so amended. Therefore, claims 4 and 16 are submitted as allowable for the reasons given in the Office Action.

Claims Rejected on Prior Art

Claims 1 and 13 are independent method and apparatus claims, respectively, from which the remaining claims depend (but for Claim 4 (Currently Amended) and Claim 16 (Currently Amended)). These claims were originally rejected as anticipated by or obvious in view of Cigaina WO 01/41671 A2. Forsell US 2002/0193842 A1 was combined with Cigaina to reject certain dependent claims.

Independent claims 1 and 13 are hereby amended in a manner to clearly distinguish over the prior art. The remaining dependent claims are submitted as allowable by reason of their additional structure as well as the allowability of the independent claims.

The Cigaina reference is for a gastric band to treat obesity. Such bands are disclosed in the present application on page 5 beginning at line 5. Best illustrated in Fig. 2 of Cigaina, the band is not placed around the esophagus. Instead, the band is placed around the stomach to create a small stomach pouch above the band, which is connected to the bulk of the stomach beneath the band by a small restricted passage formed by the band. The passage is commonly referred to a stoma. As a result of making the small gastric pouch above the band, a patient can only consume a very small volume of food before feeling satiety. Such gastric procedures are not treatments for gastric reflux disease. The bands do not restrict or elongate the esophagus and do not reposition the cardiac notch (the junction point between the esophagus and the upper portion of the stomach). Instead, food which is consumed remains in the small pouch of the stomach above the band and can be regurgitated into the esophagus.

The present invention is not directed towards creating a small pouch of the stomach beneath the esophagus. Instead, the present invention provides a restriction

along the entire length of the reducing element 10 to form a lengthening of the esophagus and a repositioning of the cardiac notch.

The independent claims 1 and 13 have been amended to clarify that the reducing element 10 is sized for the reducing element to be placed around both a distal portion of the esophagus and a proximal portion of the stomach. So positioned, the reducing element creates an extended esophageal portion and restrains formation of a gastric pouch between the proximal and distal ends of the reducing element. In this regard, the present invention performs in a medical device and in a less invasive procedure an esophageal lengthening otherwise performed through more drastic surgical procedures described beginning on page 4, line 26 of the present application.

As a result of the amendments to the independent claims 1 and 13, the claims now present the structure, which distinguishes over the gastric pouch formation inherent in gastric bands such as Cigaina reference and the other gastric band references described on page 5 of the present application.

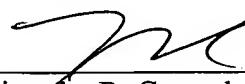
It would not be obvious to modify Cigaina in either its structure or positioning to lengthen the esophagus of the patient since it would defeat the intended purpose of gastric bands, which is to form a small gastric pouch between the esophagus and the placement of the gastric band. Furthermore, nothing in Forsell suggests a device, which lengthens the esophagus. Accordingly, with the present amendment, the claims present structure not shown in the prior art and not obvious in view of the prior art. As a result, independent claims 1 and 13 and their dependent claims are submitted as allowable.

For the reasons given above, Applicants respectfully submit this application is now in condition for allowance. Reconsideration and Notice of Allowance are solicited.

Respectfully submitted,

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